

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

ROCKWELL AUTOMATION, INC. and
ROCKWELL AUTOMATION
TECHNOLOGIES, INC.,
Plaintiffs,

v.

WAGO CORPORATION and WAGO
KONTAKTTECHNIK GMBH & CO. KG,
Defendant.

Case No. 3:10CV718-WMC

DEFENDANTS' REPORT ON PENDING DISCOVERY DISPUTES

Defendants WAGO Corporation (“WCP”) and WAGO Kontakttechnik GmbH & Co. KG (“WKT”) herein report on pending discovery disputes as required by the Court in its Order dated April 20, 2012. (Dkt. 70)

Report on Status of Plaintiffs' Discovery Disputes with Defendants

As WCP and WKT reported in Defendants' Document Production Timeline (Dkt. 73), Defendants have completed their production of English-language documents in response to Plaintiffs' outstanding document requests dated September 7, 2011, September 30, 2011, March 5, 2011, and March 9, 2011, as well as the document schedules associated with the various depositions Plaintiffs have taken in this case. German-language documents from WKT are still being reviewed, and Defendants have informed Plaintiffs that production of German-language documents responsive to Plaintiffs' document requests is expected to be completed by May 11, 2012. (*See* R. Cook, Decln., Exhibit A at 2)

Plaintiffs have asserted in correspondence that Defendants' document production does not comply with Rule 34(E), because some documents are asserted by Plaintiffs not to be in a sufficiently machine-readable format. (*See* R. Cook, Decln., Exhibit B at 2; Exhibit D at 2)

(underlying email)) What Rule 34(E) requires is: “If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.” Fed. R. Civ. P. 34(E)(ii). The searchability question raised by Plaintiffs appears to be limited to a few documents comprising some of the non-source code documentation made available with CoDeSys source code that was inspected by Plaintiffs’ counsel on April 19 (of which copies were subsequently requested by Plaintiffs’ counsel, *see* Dkt. 73 at 6). It has been explained to Plaintiffs that CoDeSys is third-party software and that the CoDeSys source code was made available by its owner solely for the purpose of enabling Defendants to defend themselves in this lawsuit. (*See* R. Cook, Decln., Exhibit D) It has also been explained to Plaintiffs that some of the non-source code documentation provided with source code appears to have been made available to Defendants by the owner of the source code in a manner that did not facilitate production in a manner that is fully satisfactory to Plaintiffs. (*See* R. Cook, Decln., Exhibits C, D) Plaintiffs are absolutely incorrect in the assertion in their correspondence that “Defendants’ April 27 production is not in a reasonably usable form as the production has converted searchable sources of information into a non or poorly searchable format” and that “[i]t appears Defendants’ chose to strip this functionality from the documents despite Rockwell's request that the documents be produced in a searchable format.” (R. Cook, Decln., Exhibit D at 2 (underlying email)) Defendants did not strip data to impede Plaintiffs’ ability to search otherwise searchable files.

Report on Status of Defendants’ Discovery Disputes with Plaintiffs

Plaintiffs were not prepared to discuss Defendants’ discovery issues (*see* R. Cook, Decln., Exhibit A at 1; Exhibit D), so there is nothing to report with regard to Defendants’ Pending Discovery Disputes with Plaintiffs.

Date: May 1, 2012

Respectfully submitted,

/s/ Robert N. Cook

Robert N. Cook
Whitham, Curtis, Christofferson & Cook, P.C.
11491 Sunset Hills Road, Suite 340
Reston, Virginia 20190
(703) 787-9400 (voice)
(703) 787-7557 (fax)
bob@wcc-ip.com

John C. Scheller
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
Madison, Wisconsin 53703
(608) 283-2276 (voice)
(608) 283-2275 (fax)
jcscheller@michaelbest.com

Counsel for Defendants
WAGO CORPORATION and
WAGO KONTAKTTECHNIK GMBH & CO. KG

CERTIFICATION

I certify that on May 1, 2012, I caused the foregoing DEFENDANTS' REPORT ON PENDING DISCOVERY DISPUTES to be electronically filed with the Clerk of Court using the Court's Case Management/Electronic Case Filing ("CM/ECF"). All parties are represented by attorneys of record registered with CM/ECF and will receive service electronically. There is no party requiring a different form of service under the Court's electronic filing procedures.

/s/ Robert N. Cook

Robert N. Cook
Whitham, Curtis, Christofferson & Cook, P.C.
11491 Sunset Hills Road, Suite 340
Reston, Virginia 20190
(703) 787-9400 (voice)
(703) 787-7557 (fax)
bob@wcc-ip.com